MONTANA WETLANDS LEGACY PROJECTS
CONTRACT NUMBER: SPB04-878P-B

1. PARTIES

THIS CONTRACT, is entered into by and between the State of Montana Department of Administration, State Procurement Bureau (hereinafter referred to as "the State"), whose address and phone number are Room 165 Mitchell Building, 125 North Roberts St., PO Box 200135, Helena MT 59620-0135, (406) 444-2575 and **Confluence Consulting, Inc.**, (hereinafter referred to as the "Contractor"), whose nine digit Federal ID Number, address and phone number are 84-1382334, 211 N Grand Ave., Suite E, PO Box 1133, Bozeman MT 59715, and (406) 585-9500.

THE PARTIES AGREE AS FOLLOWS:

2. EFFECTIVE DATE, DURATION, AND RENEWAL

2.1 Contract Term. This contract shall take effect upon full execution of all signatory parties, and terminate on June 30, 2009, unless terminated earlier in accordance with the terms of this contract. (Mont. Code Ann. § 18-4-313.)

2.2 Contract Renewal. This contract may, upon mutual agreement between the parties and according to the terms of the existing contract, be renewed in one-year intervals, or any interval that is advantageous to the State, for a period not to exceed a total of two additional years. This renewal is dependent upon legislative appropriations.

3. NON-EXCLUSIVE CONTRACT

The intent of this contract is to provide state agencies with an expedited means of procuring supplies and/or services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

4. COOPERATIVE PURCHASING

Under Montana law, public procurement units, as defined in section 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units.

5. SERVICES AND/OR SUPPLIES

Contractor agrees to provide the State with an expedited means of hiring qualified contractors to provide Wetland, Stream, and other Aquatic Resource restoration, enhancement, and development design and implementation for various projects around the State of Montana. This contract will be utilized primarily by FWP but other state agencies or public procurement units may utilize this contract in conjunction with wetland, stream, and other aquatic resource restoration, enhancement and development projects.

The Contractor may need to have access to engineering services depending on the nature of the project. The Contractor will be expected to use their own best judgment as to whether engineering services are needed for a given project. However, traditional engineering methodologies are not the emphasis of this contract. It is a violation of State Statute to practice engineering or land surveying without a license.

5.1 Design Expectations. FWP prefers stream restoration improvement techniques that simulate natural conditions and facilitate natural stream processes. The State is always open to new and innovative approaches that accomplish project goals providing these techniques have proven success.

5.2 Contractor Responsibilities. The selected contractor for an individual project is responsible for the supervision and implementation of the designs and is responsible for oversight of work performed by all subcontractors. In most cases the contractor will provide and be responsible for all the necessary equipment, materials, supplies and personnel necessary for proper execution of the work. However, the State reserves the right to hire subcontractors (equipment and/or labor) if it will provide a cost savings to the State. The selected contractor is also responsible for clean up of the sites and must have the sites inspected by the State immediately prior to completion.

5.3 Permits. The Contractor is responsible for obtaining all necessary permits for each project, including but not limited to 404 permits, 310 (streambank preservation) permits, other permits, SHPO clearance, and water rights.

5.4 On-Site Requirements/Cleanup. When a contractor is contacted by the State to discuss a project, the State and the contractor will visit the job site to become familiar with conditions relating to the project and labor requirements. The State and chosen contractor will then cooperatively develop project feasibility, conceptual design and cost.

The Contractor shall adequately protect the work, adjacent property, and the public in all phases of the work. The Contractor shall be responsible for all damages or injury due to their action or neglect.

The Contractor shall maintain access to all phases of the project pending inspection by the State or its representative.

All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance.

The Contractor shall respond within seven calendar days after notice of observed defects has been given and shall proceed to immediately remedy these defects. Should the Contractor fail to respond to the notice or not remedy the defects, the State may have the work corrected at the expense of the Contractor.

In terms of cleanup, the Contractor shall:

(a) Keep the premises free from debris and accumulation of waste;
(b) Clean up any oil or fuel spills;
(c) Keep machinery clean and free of weeds;
(d) Remove all construction smears and stains from finished surfaces;
(e) Perform finishing site preparation to: (1) limit the spread of noxious weeds, and (2) smooth exposed ground surface to enhance aesthetics, provide sire-footing, and provide uniform bed for future revegetation work before final payment by the State;
(f) Remove all construction equipment, tools and excess materials before final payment by the State; and
(g) Install silt fences as necessary, prevent fall-back of excavated materials, and prevent any other potential violations of federal or state water protection laws during the period of construction.

5.5 Work Acceptance. The Contractor is responsible for project oversight as needed. The State may also periodically provide personnel for administrative oversight from the initiation of the contract through project completion. All work will be inspected by the State or designated liaison prior to approval of any contract payments. All work rejected as unsatisfactory shall be corrected prior to final inspection and acceptance. Contractor shall respond within seven calendar days after notice of defects has been given by the State and proceed to immediately remedy all defects.

5.6 Records. The Contractor will supply the State with photo documentation of methods of habitat restoration progress throughout project implementation. Contractor will maintain records for themselves and all subcontractors of supplies, materials, equipment and labor hours expended.

5.7 Communication. During a project the chosen contractor is required to make weekly contact with the State liaison, or other parties designated by the State for communications, to make arrangements for field inspections and project compliance. This communication must be made in person or by telephone conversation with designated liaisons. Voice mail recordings will not be considered communication unless approved by the State's project contact.

Remoteness of project sites may necessitate that the Contractor have some form of field communication such as a cellular phone. This communication is necessary to enable the State to respond to public concerns related to the project, accidents, inspections, or other project issues that require immediate feedback. Weekly communication will commence when the chosen contractor initiates project implementation.

5.8 Project Monitoring and Reports to the Corps of Engineers. The Contractor is responsible for monitoring their projects and reporting to the Corps of Engineers about the development of wetland and stream function resulting from the project. In this way, the Corps will know whether wetland credit for the project has been earned.

5.9 Change of Staffing. Since qualifications of personnel were key in determining which offeror's were selected to be on this term contract, a written notification to the State Agency requesting services of any contractor changes of key personnel must be made prior to entering into negotiations to perform any specific work scope. Contractor shall replace such employee(s) at its own expense with an employee of substantially equal abilities and qualifications without additional cost to the Agency. If these staffing changes cause the contractor to no longer meet the qualifications stated herein, that firm will be removed from the service area of this term contract. Failure to notify the State Agency of staffing changes could result in the contractor being removed from the term contract listing and possible suspension from bidding on other State projects.

5.10 Collaboration on Potential Projects. The State encourages collaboration between Contractors to increase the scope and effectiveness of services offered. All subcontractors to be used in any project must be approved by FWP or the authorized entity initiating the project.

6. PROJECT SELECTION

The State will be responsible for identifying projects, contacting landowners and securing necessary permission/cooperation agreements, selecting a contractor, writing grant applications and approving project payments.

The State will not initiate projects where it is known that hazardous materials are present. If there is an indication of a potential of hazardous materials, then the State will do testing prior to contacting the Contractor. However, there is always the possibility of unforeseen problems resulting in the stoppage of a project.

The selected contractor will be required to meet with State personnel at the project site to conduct a site evaluation, discuss project issues and begin the negotiation process on project feasibility, conceptual design and costs for each project.

7. CONTRACTOR SELECTION

The State may select a term contract holder from the Environmental Services Contract-Home page under MT Wetlands Legacy Projects as provided under the state's website address http://www.discoveringmontana.com/doa/gsd/procurement/TermContracts/environservices/Default.asp , taking into consideration such things as the contractor's expertise, requirements and location of the project, the contractor's availability and access to resources necessary to efficiently and effectively complete the project, demonstrated excellent past performance on State and public projects, identified subcontractors and total project cost**.**

7.1 General. Ordering agencies shall use the procedures in this section when ordering services priced at hourly rates as established by each Term Contract (TC).

7.2 Request for Quotation (RFQ) procedures. The ordering agency must provide an RFQ, which includes the statement of work and limited but specific evaluation criteria (*e.g.*, experience and past performance), to all TC contractors. The RFQ may be posted to the agency's state website to expedite responses.

7.3 Statement of Work (SOW's). All SOW's shall include at a minimum a detailed description of the work to be performed; location of work; period of performance; deliverable schedule; applicable performance standards; and any special requirements (*e.g.*, security clearances, travel, special knowledge).

(1) Ordering agency may select a contractor from the appropriate list and directly negotiate a mutually acceptable project based on a sudden and unexpected happening or unforeseen occurrence or condition, which requires immediate action (Exigency).

(2) Ordering agency may place orders at, or below the $5,000 threshold with any term contract contractor that can meet the agency's needs. The ordering agency should attempt to distribute orders among all contractors.

(3) For orders estimated to exceed $5,000 but less than $25,000.

(i) The ordering agency shall develop a statement of work.
(ii) The ordering agency shall provide the RFQ (including the statement of work and evaluation criteria) to at least three TC contractors.
(iii) The ordering agency shall request that contractors submit firm-fixed prices to perform the services identified in the statement of work.

(4) For orders estimated to exceed $25,000. In addition to meeting the requirements of 3 above, the ordering agency shall:

(i) Provide the RFQ (including the statement of work and the evaluation criteria) to all TC contractors .

7.4 Evaluation. The ordering agency shall evaluate all responses received using the evaluation criteria provided in the RFQ to each TC contractor. The ordering agency is responsible for considering the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. The agency will place the order with the contractor that represents the best value. After award, ordering agencies will provide timely notification to unsuccessful TC contractors. If an unsuccessful TC contractor requests information on a task order award that was based on factors other than price alone, a brief explanation of the basis for the award decision shall be provided.

7.5 Minimum documentation. The ordering agency shall document:
(1) The TC contractors considered, noting the contractor from which the service was purchased;
(2) A description of the service purchased;
(3) The amount paid;
(4) The evaluation methodology used in selecting the contractor to receive the order;
(5) The rationale for making the selection;
(6) Determination of price fair and reasonableness.

Agency project task orders will be utilized to finalize the project. Only written addenda will be used for adjustments of the task orders and must be signed by both parties. All task orders must contain signatures from both parties and appropriate agency legal review as directed in their procurement policy.

The State will monitor contractor selection by using the information provided in the annual term contract usage reports.

Contractor's who fail to respond to three (3) RFQ opportunities within a one-year period between July 1st and June 30th, may be removed from the qualified list of contractors.

8. CONSIDERATION/PAYMENT

8.1 Payment Schedule. In consideration for the Montana Wetlands Legacy projects to be provided, the State shall pay according to the prices listed in Attachment B. Project budgets will be negotiated for each individual project. However, all rates, terms and conditions set forth in this term contract will be applied to individual contracts.

8.2 Invoicing Methods. The State reserves the right to choose the invoicing method from the following: (1) Prime contractor's billing will include the subcontractors charges and payment will be made to the prime; or (2) Prime and subcontractors will bill the State separately and the State will pay each directly.

8.3 Withholding of Payment. The State may withhold payments to the Contractor if the Contractor has not performed in accordance with this contract. Such withholding cannot be greater than the additional costs to the State caused by the lack of performance.

9. COST/PRICE ADJUSTMENTS

9.1 Price Increases Negotiated Based on Increases in Contractor's Costs. Price increases may be permitted at the time of contract renewal through a process of negotiation with the Contractor and the State. Any price increases must be based on demonstrated industry-wide or regional increases in the Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value. Contractor must provide written, verifiable justification for any cost adjustments they request during each renewal period. Contractor shall provide its cost adjustments in both written and electronic format.

10. TERM CONTRACT REPORTING

Term contract holder(s) shall furnish annual reports of term contract usage. Each report shall contain the project description, total dollars expended, and the name of the agency purchasing the services. The first report for this term contract will be due July 16, 2005.

Reported volumes and dollar totals may be checked by the State Procurement Bureau against State records for verification. Failure to provide timely or accurate reports is justification for cancellation of the contract and/or justification for removal from consideration for award of contracts by the State.

11. CONTRACTOR REGISTRATION

The Contractor is required to be registered with the Department of Labor and Industry under sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a Contractor who is not registered and may award the contract to the next responsive vendor if registration is not completed in a timely manner. (Mont. Code Ann. § 39-9-401.)

Aquatic Design & Construction	Contractor Registration Number: 51779
Bitterroot Restoration	Contractor Registration Number: 13247
Devers Excavation & Aquatics	Contractor Registration Number: 37777
R.E. Miller & Sons Excavating	Contractor Registration Number: 13025

12. CONTRACTOR WITHHOLDING

Section 15-50-206, MCA, requires the state agency or department for whom a public works construction contract over $5,000 is being performed, to withhold 1 percent of all payments and to transmit such monies to the Department of Revenue.

13. MONTANA PREVAILING WAGE REQUIREMENTS

Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of $25,000 for construction or nonconstruction services in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Unless superseded by federal law, at least 50% of the workers of each contractor engaged in construction services must be performed by bona fide Montana residents. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with sections 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

In addition, unless superseded by federal law, all employees working on a public works contract shall be paid prevailing wage rates in accordance with sections 18-2-401 through 18-2-432, MCA, and all administrative rules adopted pursuant thereto. Montana law requires that all public works contracts, as defined in section 18-2-401, MCA, in which the total cost of the contract is in excess of $25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

Furthermore, section 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with section 18-2-423, MCA. Section 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis.

Each contractor, subcontractor, and employer must maintain payroll records in a manner readily capable of being certified for submission under section 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

The nature of the work performed or services provided under this contract meets the statutory definition of a "public works contract" under section 18-2-401(11)(a), MCA, and falls under the category of Heavy Construction and Nonconstruction services. The booklets containing Montana's 2003 Rates for Heavy Construction and Nonconstruction Services are attached.

The most current Montana Prevailing Wage Booklet will automatically be incorporated at time of renewal. It is the contractor's responsibility to ensure they are using the most current prevailing wages during performance of its covered work.

14. ACCESS AND RETENTION OF RECORDS

14.1 Access to Records. The Contractor agrees to provide the State, Legislative Auditor or their authorized agents access to any records necessary to determine contract compliance. (Mont. Code Ann. § 18-1-118.)

14.2 Retention Period. The Contractor agrees to create and retain records supporting the Montana Wetlands Legacy projects for a period of three years after either the completion date of this contract or the conclusion of any claim, litigation or exception relating to this contract taken by the State of Montana or a third party.

15. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

The Contractor shall not assign, transfer or subcontract any portion of this contract without the express written consent of the State. (Mont. Code Ann. § 18-4-141.) The Contractor shall be responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by the Contractor. No contractual relationships exist between any subcontractor and the State.

16. HOLD HARMLESS/INDEMNIFICATION

The Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

17. REQUIRED INSURANCE

17.1 General Requirements. The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

17.2 Primary Insurance. The Contractor's insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.

17.3 Specific Requirements for Commercial General Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of $1,000,000 per occurrence and $2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

17.4 Additional Insured Status. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of the Contractor, including the insured's general supervision of the Contractor; products and completed operations; premises owned, leased, occupied, or used.

17.5 Specific Requirements for Automobile Liability. The Contractor shall purchase and maintain coverage with split limits of $500,000 per person (personal injury), $1,000,000 per accident occurrence (personal injury), and $100,000 per accident occurrence (property damage), OR combined single limits of $1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors.

17.6 Additional Insured Status. The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, hired, or borrowed by the Contractor.

17.7 Specific Requirements for Professional Liability. The Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of $1,000,000 per occurrence and $2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of the Contractor or its officers, agents, representatives, assigns or subcontractors. Note: if "occurrence" coverage is unavailable or cost prohibitive, the Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

17.8 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the state agency. At the request of the agency either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees,

and volunteers; or (2) at the expense of the Contractor, the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

17.9 Certificate of Insurance/Endorsements. A certificate of insurance from insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The Contractor must notify the State immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

18. COMPLIANCE WITH THE WORKERS' COMPENSATION ACT

Contractors are required to comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with sections 39-71-120, 39-71-401, and 39-71-405, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither the contractor nor its employees are employees of the State. This insurance/exemption must be valid for the entire term of the contract. A renewal document must be sent to the State Procurement Bureau, upon expiration.

19. COMPLIANCE WITH LAWS

The Contractor must, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the Contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the Contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

20. INTELLECTUAL PROPERTY

All patent and other legal rights in or to inventions created in whole or in part under this contract must be available to the State for royalty-free and nonexclusive licensing. Both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish or otherwise use and authorize others to use, copyrightable property created under this contract.

21. PATENT AND COPYRIGHT PROTECTION

21.1 Third Party Claim. In the event of any claim by any third party against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim, in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor will indemnify the State against all costs, damages and attorney's fees that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

21.2 Product Subject of Claim. If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine if the Contract has been breached.

22. CONTRACT TERMINATION

22.1 Termination for Cause with Notice to Cure Requirement. The State may terminate this contract for failure of the Contractor to perform any of the services, duties, or conditions contained in this contract after giving the Contractor written notice of the stated failure. The written notice must demand

performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

22.2 Reduction of Funding. The State, at its sole discretion, may terminate or reduce the scope of this contract if available funding is reduced for any reason. (See Mont. Code Ann. § 18-4-313(3).)

23. STATE PERSONNEL

All project management and coordination on behalf of the State shall be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed pursuant to this contract shall be coordinated between the State's liaison and the Contractor's liaison.

23.1 State Contract Manager. The State Contract Manager identified below will be the single point of contact for the coordination of all contract issues under this contract. The State Contract Manager will meet with the Contractor Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The State Contract Manager for this contract is:

Robert Oliver, Contracts Officer
State Procurement Bureau
Room 165, Mitchell Building
125 North Roberts
PO Box 200135
Helena MT 59620-0135
Telephone #: (406) 444-0110
Fax #: (406) 444-2529
E-mail: ROliver@mt.gov

23.2 State Project Manager. The State Project Manager identified below will manage the day-to-day project activities on behalf of the State.

The State Project Manager for this contract is:

Tom Hinz, Coordinator
Montana Wetlands Legacy
1400 South Nineteenth
Bozeman MT 59718
Telephone #: (406) 994-7889
Fax #: (406) 994-4090
E-mail: thinz@montana.edu

24. CONTRACTOR PERSONNEL

24.1 Identification/Substitution of Personnel. The personnel identified or described in the Contractor's proposal shall perform the services provided for the State under this contract. Contractor agrees that any personnel substituted during the term of the contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The State reserves the right to approve Contractor personnel assigned to work under the contract, and any changes or substitutions to such personnel. The State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve the Contractor to perform and be responsible for its obligations under this Contract. The State reserves the right to require Contractor personnel replacement. In the event that Contractor personnel become unavailable, it will be the Contractor's responsibility to provide an equally qualified replacement in time to avoid delays to the work plan.

24.2 Contractor Contract Manager. The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues.

The Contractor Contract Manager for this contract is:

James Lovell
211 N Grand Ave Suite E
PO Box 1133
Bozeman MT 59715
Telephone #: (406) 585-9500
Fax #: (406) 582-9142
E-mail: jlovell@confluenceinc.com

24.3 Contractor Project Manager. The Contractor Project Manager identified below will manage the day-to-day project activities on behalf of the Contractor:

The Contractor Project Manager for this contract is:

James Lovell
211 N Grand Ave Suite E
PO Box 1133
Bozeman MT 59715
Telephone #: (406) 585-9500
Fax #: (406) 582-9142
E-mail: jlovell@confluenceinc.com

25. MEETINGS

The Contractor is required to meet with the State's personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the contract or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. Meetings will occur as problems arise and will be coordinated by the State. The Contractor will be given a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired. However, at the Contractor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings two consecutive missed or rescheduled meetings, or to make a good faith effort to resolve problems, may result in termination of the contract.

26. CONTRACTOR PERFORMANCE ASSESSMENTS

The State may do assessments of the Contractor's performance. This contract may be terminated for one or more poor performance assessments. Contractors will have the opportunity to respond to poor performance assessments. The State will make any final decision to terminate this contract based on the assessment and any related information, the Contractor's response and the severity of any negative performance assessment. The Contractor will be notified with a justification of contract termination. Performance assessments may be considered in future solicitations.

27. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, or is terminated prior to the completion of a project, or if the work on a project is terminated, for any reason, the Contractor must provide for a reasonable period of time after the expiration or termination of this project or contract, all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such

transition assistance will be deemed by the parties to be governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay the Contractor for any resources utilized in performing such transition assistance at the most current rates provided by the contract. If there are no established contract rates, then the rate shall be mutually agreed upon. If the State terminates a project or this contract for cause, then the State will be entitled to offset the cost of paying the Contractor for the additional resources the Contractor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said termination.

28. CHOICE OF LAW AND VENUE

This contract is governed by the laws of Montana. The parties agree that any litigation concerning this bid, proposal or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana and each party shall pay its own costs and attorney fees. (See Mont. Code Ann. § 18-1-401.)

29. SCOPE, AMENDMENT AND INTERPRETATION

29.1 Contract. This contract consists of 11 numbered pages, any Attachments as required, RFP #SPB04-878P**,** as amended and the Contractor's RFP response as amended. In the case of dispute or ambiguity about the minimum levels of performance by the Contractor the order of precedence of document interpretation is in the same order.

29.2 Entire Agreement. These documents contain the entire agreement of the parties. Any enlargement, alteration or modification requires a written amendment signed by both parties.

30. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

DEPARTMENT OF ADMINISTRATION
STATE PROCUREMENT BUREAU
PO BOX 200135
HELENA MT 59620-0135

BY: Robert Oliver, Contracts Officer
(Name/Title)

BY: _____
(Signature)

DATE: _____

CONFLUENCE CONSULTING, INC.
211 N GRAND AVE., SUITE E, PO BOX 1133
BOZEMAN MT 59715
FEDERAL ID # 84-1382334

BY: _____
(Name/Title)

BY: _____
(Signature)

DATE: _____

ATTACHMENT A
CONTRACTOR'S RFP RESPONSE

Section 4: Offeror Qualifications

4.0 States Right to Investigate and Reject

Confluence Consulting, Inc. understands sub-section 4.0 and will comply.

4.1 Offeror Informational Requirements

4.1.1 References

Confluence has listed three government and three non-government references for clients whom we have provided services similar to those described in the Wetlands Legacy RFP. These references are all for projects in Montana and represent just a few examples of stream and wetland restoration projects that we have completed in the past couple of years. Table 1 provides a listing of the last five public agency contracts which Confluence has completed.

Lost Creek Restoration, Lost Creek, Montana

Client:	*Montana Fish, Wildlife and Parks*
Dates of service:	*December 2003 – June 2004*
Contact:	*Mr. Eric Reiland* *(406) 542-5520* *ewreiland@montana.com*
Project team members:	*Jim Lovell, principal manager* *Mike Sanctuary, project manager, restoration specialist and fisheries biologist, construction supervision* *Ron LeCain, restoration specialist and wetland ecologist, construction supervision*
Project Description:	*Provided design, construction supervision, and monitoring services for channel enhancements in approximately 5 miles of trout stream which has been significantly degraded by channel straightening and overgrazing. The project used a holistic approach that focused on restoring natural geomorphic and biological function to the stream corridor through implementation of targeted restoration activities and progressive land management strategies. Restoration activities include restoring approximately 6000 feet of channelized stream to its historic channel, stabilizing approximately 5,000 feet of eroding bank, installing over 50,000 willow sprigs, and improving overwintering and spawning habitat through the entire length of the project.*

Brackett Creek Channel Relocation and Habitat Restoration, Clyde Park, Montana

Client:	*Private Client*
Dates of service:	*November 2002 – ongoing*
Contact:	*Tom Elliott* *406-443-6500*
Email:	*telliott@bigsky.net*
Project team members:	*Jim Lovell, principal manager, channel design* *Ron LeCain, construction supervision* *Carol Endicott, fisheries biologist* *Myla McGowan, grant acquisition*
Project description:	*Provided design, permitting, and construction supervision services for the relocation of approximately two miles of a channelized perennial stream to its historic alignment, and the restoration of an additional two miles of fisheries habitat. Relocated and restored the stream as part of the overall effort to improve Yellowstone cutthroat trout and riparian habitat on lands severely impacted by historic grazing and agricultural practices. To remedy these impacts, we relocated nearly 7,000 feet of the stream to historic or new,*

meandering channels complete with pools, runs, boulders, woody debris, and spawning gravel. In addition, we stabilized over 1,000 feet of severely eroding banks using bioengineering technology and revegetation with native plants. Due to the scale of this project state and federal permit applications were extensive and complex. Confluence provided all services to streamline the permitting process, allowing adherence to a tight construction schedule.

Fishtrap Creek Grayling Enhancement Plan, Wisdom, Montana

Dates of service:	*May 2004 – November 2004*
Client:	*Montana Fish, Wildlife and Parks, US Fish and Wildlife Service*
Contact:	*Jim Magee, MFWP* *406-683-9310* *jmagee@state.mt.us*
Project team members:	*Jim Lovell, design oversight* *Mike Sanctuary, project manager, channel design, construction oversight*
Project description:	*Provided grant acquisition assistance, design, and construction oversight to improve fisheries habitat for fluvial arctic grayling in Fishtrap Creek. The channel had been channelized due to historic land use practices and was deemed by USFWS and MFWP as a high priority restoration area.*

Stanley Mitigation Wetland Design, Construction, and Monitoring, Bozeman, Montana

Dates of service:	*June 2002 – ongoing*
Client:	*Private Client*
Contact:	*Mr. Rick Walsh* *406-497-3917*
Email:	*Rick.walsh@northwestern.com*
Project team members:	*Jim Lovell, design oversight* *Ron LeCain, project manager, wetland ecologist, permitting specialist*
Project description	*Provided design and on-sight construction services for a mitigation wetland created to offset wetland losses associated with construction of a sub-station by Northwestern Energy. Our design involved the creation of ground water supplied, emergent marsh/open water habitat to enhance wildlife habitat and aesthetic features on the property. Confluence provided all design, permitting, and on-site construction supervision services for the project. In additions, we developed and implemented a comprehensive, three-year monitoring plan to assure successful development of wetland habitat, and to satisfy U.S. Army Corps of Engineers compensatory mitigation requirements.*

Johnson Property Wetland Delineation and Stream Restoration, Dillon, Montana

Dates of service:	*October 2003 – November 2004*
Client:	*Private Client*
Contact:	*Greg Johnson* *(650) 312-2562*
Email:	*gjohnson@frk.com*
Project team members:	*Ron LeCain, project manager, wetland ecologist, construction supervision*
Project description	*Enhanced over 1 mile of privately owned spring creek which was in a degraded, overwidened condition, primarily due to overgrazing by livestock. The project focused on restoring channel morphology to allow for sediment transport, and improving overwintering and spawning habitat through the entire length of the project. Restoration activities include restoring approximately 3000 feet of overwidened stream to a more natural channel morphology, installing riparian vegetation to provided overhanging cover, and relocating approximately 1,800 feet of stream channel to avoid fish passage barriers. Supervised all on the ground construction provided long-term monitoring.*

Rose Park Wetland Delineation, Bozeman, Montana

Dates of service	*May 2002 – September 2002*
Client:	*City of Bozeman*
Contact person:	*James Goehrung* *(406) 582-2264* *jgoehrung@bozeman.net*
Project team members:	*Ron LeCain, project manager, wetland ecologist*
Project description:	*As part of the overall planning process in the development of City of Bozeman lands for recreational use, Confluence conducted a wetland delineation on 21.17 acres of city land. Delineated and mapped wetland boundaries, developed a report, mapped wetland findings, and guided the City of Bozeman's planning department through the 404 permitting process for impacted wetland areas.*

4.1.2 Company Qualifications

Confluence Consulting, Inc. will serve as the prime contractor and will manage all contracts issued through the Wetlands Legacy Term Contract. Confluence, based in Bozeman, is a growing firm, currently comprised of six natural resource professionals and two support staff. Our staff is comprised of experts in fisheries biology, wetland science, stream and river enhancements, fluvial geomorphology, stream and riparian ecology, land use planning, project management, and biological and water quality monitoring. Confluence has been providing services in the study, design, restoration, and management of aquatic resources since 1996 and will be supported on this contract by Applied Geomorphology for fluvial geomorphology expertise and Carto-Logic Inc for any GIS needs. The company profiles and service area descriptions below provide more detail on the services we provide

Confluence's approach to successfully completing projects is to work in close partnership with the client to ensure that project goals are met on time and within budget. To do this, we propose a strategic relationship between Confluence and the State that includes effective communication between parties, timely contract and budget administration, and close adherence to schedules throughout the project. As a small corporation, Confluence works well as a member of larger project teams and welcomes opportunities to interface with diverse interests and disciplines.

Confluence Consulting, Inc.

Confluence offers a full range of ***aquatic planning and assessment*** services to assist in managing and restoring watersheds. Confluence applies a multidisciplinary approach to problem solving that integrates the fields of wetland ecology, riparian ecology, fluvial geomorphology, hydrology, engineering, fisheries biology, and botany. As part of these services, we develop and implement monitoring studies, geomorphic studies, riparian condition surveys, land use and human influence evaluations, restoration strategies, and best management practice development and recommendations. In addition, we provide data collection, analysis, and management services to evaluate the health of aquatic systems by examining fish communities, macroinvertebrates, periphyton, riparian vegetation, and stream channel conditions.

Confluence also significant expertise in designing and implementing effective ***stream restoration*** practices using natural channel design and bioengineering methods. We approach stream restoration from a watershed perspective to ensure that our designs balance habitat with stability and aesthetics to produce channels that look and function as though they were created by nature. Confluence provides ***wetland*** services that assure project compliance with section 404 of the federal Clean Water Act (CWA) for jurisdictional wetlands and waters throughout the western United States. As part of the overall CWA 404 permitting process, Confluence provides complete services for the establishment, creation, and long-term monitoring of mitigation wetlands. Finally, Confluence provides ***permitting*** services to comply with Montana's stream, lake, and wetland permitting requirements, as well as Storm Water Pollution Prevention Plan (SWPPP) development and National Pollution Discharge Elimination System (NPDES) requirements. Our experience ensures that our clients meet the complex sets of regulations and permitting requirements of federal, state and local agencies.

Applied Geomorphology Inc.

Applied Geomorphology, Inc. (AGI) is a women-owned business based in Bozeman, Montana that specializes in geomorphic assessment and development of process-based strategies for stream and watershed restoration. AGI specializes in performing geomorphic assessments on a watershed scale to determine channel response to human impacts, develop sediment TMDLs, and generate restoration strategies and project prioritizations. Karin Boyd, P.G., is the company principal and a registered professional geologist (Wyoming No. PG-594), with 14 years experience in applied fluvial geomorphology providing geomorphic assessments of impacted river systems, and developing geomorphic approaches to channel restoration. Her primary expertise is the quantitative geomorphic analysis of river systems, and incorporation of results into resource management strategies. Ms. Boyd has performed geomorphic inventories and evaluations on numerous destabilized river systems throughout the country. She has performed geomorphic assessments on a watershed scale, using both channel classification and geomorphic evolution assessments to identify impaired channel segments and develop restoration strategies. AGI's primary focus is the interdisciplinary assessment of Montana watersheds, and the development of feasible strategies for long-term resource management.

Carto-Logic GIS

Carto-Logic GIS uses geographic information system technology to provide a variety of services to members of the public and private sector. With over ten years experience working with landowners, government agencies, non-profit organizations, conservation districts, communities, and universities, the staff at Carto-Logic GIS is dedicated to helping all users understand natural resource data and information by providing services in; custom GIS mapping and cartography, land use planning consultation, natural resource data research and field inventory. Katherine G. Alvin, principal of Carto-Logic, has over a decade of experience with natural resource applications and GIS technologies. Her Environmental Studies BA and Soil Science BS both emphasized Land Use Planning, which prepared her for her work with the USDA Natural Resources Conservation Service and the Gallatin Conservation District. Expanding on traditional scientific field research, Ms. Alvin became skilled in using GPS tools and Geographic Information Systems to facilitate all aspects of land use planning support. She has extensive experience with a broad range of data research and processing tasks, including satellite imagery analysis, hard copy map conversion, on-the-fly GPS inventory, and cartographic production.

The following sections describe the specific qualifications and services offered by the Confluence team.

Fish Habitat Restoration

- Habitat design and construction
- Habitat assessments
- Fisheries investigations
- Biological monitoring

Confluence recognizes that a successful habitat restoration project must be based on an understanding of the factors limiting the fishery. The Confluence team has extensive experience restoring a variety of habitats for fish, including the creation of spawning channels and the restoration of spawning habitat in natural streams to increase fish recruitment. We have also developed pools for adult foraging and overwintering habitat and riffles for aquatic macroinvertebrate and juvenile habitat. We have installed root wads and other woody debris to increase cover and have created backwater areas for juvenile rearing habitat. In all cases, we focus on designing habitat features that are self-sustaining and based on geomorphic principles.

Wetland Delineation, Restoration and Creation

- Wetland design and construction
- Wetland delineations
- Functional value assessments
- Mitigation plans and permitting

The Confluence team has delineated, designed, created, and restored hundreds of acres of wetlands in a variety of geographic settings. These include open emergent wetlands for waterfowl production, oxbow wetlands, wet meadow habitat, and riparian floodplain wetlands. Confluence provides complete services for the establishment, creation, and long-term monitoring of mitigation wetlands. We utilize such wetland assessment methods as Army Corps of Engineers (ACOE) and Montana Department of Transportation (MDT) Wetland Assessment Methods.

Stream Channel Design

- Rosgen channel classification
- Fluvial geomorphic studies
- Hydrologic analyses
- Hydraulic modeling
- Sediment transport modeling

The Confluence team designs stream restoration projects that balance habitat with stability and aesthetics to produce channels that look and function as though they were created by nature. Our designs use a multi-disciplinary approach that integrates the fields of fluvial geomorphology, hydrology, fisheries biology, and engineering. We routinely use the Rosgen Stream Classification System as well as the reference reach approach to guide our channel designs. Where reference reaches are not available, we develop channel designs based on published empirical relationships. Our stream restoration projects are highly successful because we approach stream restoration challenges from a watershed perspective. This ensures that our designs are compatible with large-scale watershed and ecosystem processes.

Bank Stabilization and Bioengineering

- Bank stability assessments
- Scour and tractive force analyses
- Geotextile design and application
- Riparian restoration

We specialize in the application of bioengineering methods to stabilize eroding stream banks and hill slopes. These methods rely on the use of live plants and other natural materials to create stable banks. Because plants continually grow and adapt to changing conditions, bioengineering can, in many situations, provide a more enduring solution to erosion problems compared to traditional riprap, gabions, or retaining walls. As an added benefit, bioengineered slopes are aesthetically pleasing and provide excellent habitat for fish and wildlife.

The Confluence team recognizes that bank instability is the result of site-specific factors including soils, vegetation, hydrology, hydraulics, and sediment transport. Consequently, we have developed and adapted a wide range of bioengineering methods for bank stabilization, allowing us to match appropriate design solutions to the specific conditions of each site. These methods include bank resloping, placement of sod mats and willow clumps, toe armoring, fabric encapsulated soil lifts, root wad revetment, brush layering, live fascines, willow wattling, and various combinations of these methods. We are also experienced in the application of more traditional bank armoring techniques such as riprap, gabions, and retaining walls. Our designs have been successfully tested under conditions of extreme flooding and continue to provide cost-effective erosion control and slope stabilization.

Watershed Planning and Biomonitoring

- Fisheries investigations
- Biological monitoring
- Water quality assessments
- GIS mapping and data analysis

With increasing demands on Montana’s water resources, watershed planning is more important than ever. Confluence offers a full range of watershed planning and assessment services to assist in managing and restoring watersheds. As part these services, Confluence offers significant expertise in assessment of the biological, chemical, and physical integrity of aquatic systems. This includes statistically valid studies of macroinvertebrates, periphyton, and fish communities including appropriate metrics. We specialize in all aspects of total maximum daily load (TMDL) development, including source assessments, plan development, implementation and effectiveness monitoring. Finally, Confluence is skilled in a variety of habitat assessment protocols including the R1/R4 fish habitat methodology, Rosgen channel typing, proper functioning condition (PFC) assessments of riparian areas and Environmental Monitoring and Assessment Program (EMAP) protocols.

Revegetation Planning and Implementation

- Development of revegetation plans
- Vegetation surveys and assessments
- Soil testing and amendment design
- Seeding, plant installation, plant material salvage, and

- Seed collection and native plan propagation
- transplanting
- Vegetation monitoring

Revegetation is a key component of most stream restoration projects. Establishing appropriate vegetation can increase channel and floodplain stability, provide additional habitat values for fish and wildlife, and help remove sediment and nutrients from stream flows. The Confluence team includes staff with plant and riparian ecology expertise. In addition, our team includes Bitterroot Restoration, Inc., Geum Environmental Consulting, and ADC Services as subcontractors. Each of these firms is well-qualified to provide revegetation services for projects under the Wetlands Legacy Term Contract.

Construction Management

- Construction oversight
- Project management and logistics
- Construction documentation

The Confluence team includes experts in the specialized construction methods needed in aquatic environments. Our team oversees 95% of the projects that we design, so our project managers understand the capabilities and limitations of heavy equipment for maximum production and efficiency. We save time and money on projects by implementing alternative construction methods and recommending design changes that meet project goals. In addition, our construction staff is able to make design adjustments in the field to accommodate changing site conditions and keep the project moving forward. Throughout the construction process, we keep detailed records of construction activities, heavy equipment, labor, and materials. Our construction management services will help get the job done as designed, under budget, and on schedule.

Related Engineering Services

- Irrigation structures
- Bridges and crossings
- Slope stability analyses
- Site characterization
- Road design
- Seepage and evaporative loss estimation
- Digital terrain mapping

Stream restoration projects occasionally require additional engineering services for completion. The Confluence team provides basic engineering services for stream and wetland restoration projects. For projects that require a licensed engineer, Confluence regularly teams with a number of engineering consulting firms including, HKM Engineering, Allied Engineering, and TD&H Engineering. Confluence has an established working relationship with each of these firms and can call upon their expertise for any project through the Wetlands Legacy Term Contract.

4.1.3 Subcontractor Experience

Revegetation

The Confluence team offers in-house revegetation expertise as well as outside subcontractors to provide revegetation services to the State of Montana. Confluence's in-house revegetation specialists can provide planning, vegetation surveys, riparian assessments, soil analyses, and vegetation monitoring services. Confluence also offers hand seeding and plant installation services using seasonal labor under the direction of Confluence team members. If the State elects to use the Confluence team's revegetation services, plant materials would be obtained from sources agreed upon on a project-by-project basis.

Confluence has also teamed with Aquatic Design and Construction, Bitterroot Restoration, and Geum Environmental Consulting to offer additional revegetation expertise. The inclusion of these firms will provide the State with greater flexibility in selecting revegetation services. We anticipate that each of these firms will partner cooperatively with Confluence to offer the most appropriate mix of services for each Wetlands Legacy project. Qualifications and resumes for these firms are provided in Appendix B.

Aquatic Design and Construction

ADC Services, Inc. is a Montana based company specializing in aquatic and upland habitat enhancement, consulting and construction services, and native wetland and upland plant propagation. ACD aims to enhance and restore landscapes in which native plant and animal communities thrive.

Bitterroot Restoration Inc.
Bitterroot Restoration, Inc. (BRI) was founded in 1986 to provide comprehensive restoration services to managers of disturbed lands. By 1991, they were providing a full range of services, including restoration planning, native plant propagation, and implementation to mining companies, the National Park Service, Federal Highway Administration, and other public and private land managers. BRI staff includes experienced professionals from the fields of plant and restoration ecology, riparian and wetland ecology, forestry, botany, plant physiology, resource conservation, range management, horticulture, recreation management, landscape architecture, soil science, biology, wildlife biology, GIS, natural resource database design and management, and geology.

Geum Environmental Consulting
Geum Environmental Consulting specializes in large-scale, collaborative restoration planning for large watershed areas that involve diverse stakeholders and regulatory entities. Staff have experience implementing all phases of stream and wetland restoration including site characterization, permitting, project design, construction and field crew oversight, and project monitoring. As a revegetation specialist subcontractor, Geum will provide riparian and wetland revegetation expertise for restoration projects, construction specifications, and project oversight.

Heavy Equipment
Confluence has teamed with the following heavy equipment subcontractors for the Wetlands Legacy QVL: Devers Excavation and Aquatics, R.E. Miller and Sons, Rowe Excavation, and Streamworks. Each of these firms has experience constructing FWP projects using a variety of stream renaturalization, habitat restoration, and bank stabilization methods. Information about each of these subcontractors is included in Appendix C.

Devers Excavation and Aquatics
Devers Excavation and Aquatics is an aquatics enhancement company that specializing in the creation and restoration of river, stream, lake, and pond ecosystems. Justin Devers has been involved in all aspects of aquatic and upland enhancement projects for 17 years. Devers Excavation and Aquatics has a strong commitment to the environment and an understanding of the financial responsibilities in meeting budget restraints.

R.E. Miller and Sons
Natural resource enhancement accounts for approximately sixty percent of the RE Miller and Sons annual contracts. The remainder of R. E. Miller and Sons workload is in irrigation, road construction, and site development. Natural resource enhancement work has included; river restoration, fish habitat improvement, stream bank stabilization, pond construction, and wetland construction.

Rowe Excavation
Rowe Excavation is an excavation and construction business specializing in stream enhancement, bank stabilization, and wetland construction. Established in 1992 by owner and founder Kelly Rowe, the company has grown to include over $1.5 million of heavy equipment, three construction managers, and between four and fifteen additional employees. Kelly Rowe has fifteen years experience in the excavation field. Rowe Excavation’s three supervisors have been with the company from four to seven years each and have been in charge of projects with budgets up to $450,000.

Streamworks

Streamworks, based in Lincoln, Montana, has more than 23 years experience in stream restoration, fish habitat improvement, wetlands enhancement, road construction, reclamation, bridge building, and irrigation systems. Owner Richard Thumma is an experienced excavator operator and a leader in this specialized field of stream restoration. Streamworks, Inc. provides a cost-effective product by using locally available natural materials and incorporating landowner’s management objectives. Streamworks clientele include private individuals, nonprofit conservation organizations, and local, state and federal agencies.

4.1.4 Previous Projects
The following descriptions represent some of our experience with projects similar to those that will be issued through the Wetlands Legacy Term Contract.

Wetland Delineation and Restoration

Project: Red Rock Ranch Spring Creek Restoration and Wetland Expansion
Location: Sheridan, Montana

The Red Rock Ranch in Montana approached the Confluence team requesting an investigation of the feasibility of creating a fish passage corridor between the highly productive Red Rock River and a small, degraded spring creek with a shallow irrigation pond. The owner's objectives were to enhance the spawning opportunities for the river fishery while also creating a series of interconnected wetland and angling pond complexes. We prepared a plan which contained a suite of options carefully balancing the creation of waterfowl attraction, feeding, and loafing areas, with a viable bank and float tube fishery.

Project: Bear Creek Stream and Wetland Restoration
Location: Ennis, Montana

Bear Creek, a tributary to the Madison River near Ennis, Montana, had been severely degraded from years of poor land management. This resulted in significant bank erosion and poor habitat for adult trout. For example, only four pools could be found in over 4,200 feet of stream channel. Overgrazing and vegetation control had also depleted the riparian corridor of nearly all woody species such as willows, river birch, dogwood, and cottonwood. These land use practices resulted in a stream channel that had become overly wide, covered with fine Sandhill Crane nest in constructed wetland at Bear Creek habitat features essential to a. healthy trout population. The Confluence team restored Bear Creek by constructing over 40 pools and runs, creating spawning beds, adding woody debris for cover, and restoring the riparian corridor with 600 native shrubs and trees. In addition, grazing was halted to allow the stream corridor to recover. Currently, Bear Creek has a rapidly recovering riparian corridor and a growing brown trout fishery.

Project: Corral Creek Fishery and Waterfowl Habitat Improvement
Location: Cameron, Montana

Confluence provided a variety of services to a large ranch in the southern Madison Valley of Montana interested in maximizing angling and waterfowl habitat opportunities. Efforts included the creation of trout habitat in a 5-acre wetland that was too shallow to support fish into an excellent fishery. In addition, we enhanced the remainder of the wetland by creating a diversity of water depths and planting native vegetation, greatly improving the wetland as a breeding, resting, and feeding area for local and migratory waterfowl. Confluence also deepened and augmented the habitat in an existing pond, which had slowly filled over the last thirty years, using methods that had no negative impact on the fishery during construction. We also upgraded and modernized outlet works and the dam. The pond and wetland now support healthy populations of trout and waterfowl.

Project: Stanley Mitigation Wetland Design, Construction, and Monitoring
Location: Bozeman, Montana

Confluence provided design and on-sight construction services for a mitigation wetland created to offset wetland losses associated with construction of a sub-station by Northwestern Energy. Our design involved the creation of ground water supplied, emergent marsh/open water habitat to enhance wildlife habitat and aesthetic features on the property. Confluence provided all design, permitting, and on-site construction supervision services for the project. In additions, we developed and implemented a comprehensive, three year monitoring plan to assure successful development of wetland habitat, and to satisfy U.S. Army Corps of Engineers compensatory mitigation requirements.

Project: Antelope Creek Riparian Restoration
Location: Drummond, Montana

The Montana Department of Fish, Wildlife, and Parks contracted Confluence to improve riparian conditions in a Westslope cutthroat trout stream located near Drummond, Montana. Antelope Creek, a tributary to the Clark Fork River, had been severely degraded from years of poor land management. This resulted in significant bank erosion and little or no overhanging cover for fish. Overgrazing and vegetation control has depleted the riparian corridor of nearly all woody species such as willows, Wood’s rose, dogwood, and cottonwood. Confluence restored healthy riparian cover with the planting containerized 6,000 native shrubs and trees over 2 mile reach of stream. In addition, we harvested and installed over 16,000 willow stakes. In addition, grazing was halted to allow the stream corridor to recover. Currently, Antelope Creek has a rapidly recovering riparian corridor and Westslope cutthroat trout fishery.

Project: *Flanders Mill Wetland Delineation and Mitigation*
Location: *Bozeman, Montana*
Confluence provided delineation services for wetlands and waters of the U.S. impacted by construction of an electric power substation. Services provided by our team included delineation of wet meadow and perennial stream habitat; relocation and enhancement of a perennial, spring creek; design and construction of 1.15 acres of wet meadow, mitigation wetland; and 310/404 permitting services for all these described activities. Further services provided by the Confluence team include comprehensive erosion control management during wetland construction, and long range monitoring of the constructed wetland and relocated stream.

Stream Design and Restoration
Project: *Brackett Creek Channel Relocation and Habitat Restoration*
Location: *Clyde Park, Montana*
The Confluence team provided design, permitting, and construction supervision services for the relocation of approximately two miles of a channelized perennial stream to its historic alignment, and the restoration of an additional two miles of fisheries habitat. We relocated and restored the stream as part of the overall effort to improve fisheries and riparian habitat on lands severely impacted by historic grazing and agricultural practices. To remedy these impacts, we relocated nearly 7,000 feet of the stream to historic or new, meandering channels complete with pools, runs, boulders, woody debris, and spawning gravel. In addition, we stabilized over 1,000 feet of severely eroding banks using bioengineering technology and revegetation with native plants. Due to the scale of this project state and federal permit applications were extensive and complex. Confluence provided all services to streamline the permitting process, allowing adherence to a tight construction schedule. Confluence also procured over $200,000 in grant funding to implement the project.

Project: *Locke Creek Spawning Habitat Restoration*
Location: *Livingston, Montana*
The Greater Yellowstone Coalition (GYC) approached Confluence requesting design of a fish passage corridor between the Yellowstone River and upper reaches of Locke Creek, a tributary of the Yellowstone River. The GYC's objectives were to enhance spawning opportunities and population connectivity for Yellowstone cutthroat trout. We prepared a design detailing removal of irrigation diversion structures that were acting as barriers to fish passage, and re-grading of the stream with a series of 6 step pools sloping up to the upper elevation of the removed headgate. Confluence provided all construction supervision for the project, creating enhanced spawning habitat for Yellowstone cutthroat trout and other trout species.

Project: *Forty Rod Creek Stream and Wetland Restoration*
Location: *Pinedale, Wyoming*
Confluence team members provided complete habitat evaluation, design, and construction oversight services on the restoration of over three miles of spring creek and a side channel to the Green River in central Wyoming. Thorough inventory and analysis indicated that the spring creek fishery was grossly under potential due to an excessive fine sediment supply, and a lack of spawning habitat and adult trout cover. The restoration plan addressed these limiting factors and has since converted the creek into a trophy fishery supporting trout up to 27 inches. Green River channel enhancements emphasized the creation of high quality angling opportunities where none previously existed. The combined fishery of the spring creek and Green River provide fantastic opportunities to catch rainbow trout, brown trout, brook trout, and Green River cutthroat trout. Confluence also conducted a jurisdictional wetland delineation as part of the overall effort to improve fisheries habitat in 40 Rod Creek. Activities involved the establishment of sampling plots to classify areas with hydric soils, wetland hydrology, and hydrophytic vegetation; document preparation; permitting assistance; wetland enhancement designs; and development of mitigation plans for minimizing or offsetting unavoidable wetland impacts. The Confluence team delineated over 117 acres of wetland on the site, and designed and constructed 0.94 acres of mitigation wetland.

Project: *Juday Creek Channel Relocation and Habitat Restoration*
Location: *South Bend, Indiana*
Confluence teamed with J.F. New and Associates to provide design, permitting, and construction supervision services for the relocation and restoration of Juday Creek on the University of Notre Dame campus. In addition, members of the Confluence team provided channel hydrology and hydraulic design services for the project. The stream was relocated and restored as part of the creation of a new 18-hole golf course designed by Cooke

and Crenshaw. Juday Creek had been impacted historically by straightening and by poor land use practices. To remedy these impacts, nearly 2,400 feet of the stream was relocated to a new, meandering channel complete with pools, runs, boulders, woody debris, and spawning gravel. All construction was restricted to the channel alignment to prevent disturbance to surrounding vegetation. The banks of the new channel were stabilized using bioengineering technology and revegetated with native plants. Within months of completing the project, University of Notre Dame researchers found 26 trout redds (spawning nests) in the restored reaches of Juday Creek and none in nearby unimproved sections of the stream. These studies provide evidence that the improvements have not only restored Juday Creek, but have given this unique population of brown trout an excellent chance for survival in the future.

Project: *Jarbridge River Emergency Bull Trout Habitat Reconstruction*
Location: *Jarbridge, Nevada*
The Confluence team was retained by the US Department of Justice and US Forest Service to provide a wide spectrum of services surrounding a high-profile stream restoration project focusing on endangered bull trout. Located in remote northern Nevada, the Jarbridge River was severely impacted by a major flood event and unauthorized river reconstruction. The resulting poor condition of the river caused the resident population of bull trout to be listed as endangered under emergency provisions of the Endangered Species Act. Confluence team members worked with five different state and federal agencies to develop restoration plans and provide construction oversight to restore over 2,000 feet of channel and floodplain, with completion of the entire project within 2.5 months of contract execution.

Throughout the construction process, significant steps were taken to avoid and minimize the introduction of sediment and turbidity in the water. These steps included: diverting the entire Jarbridge River flow around the project site in a lined diversion ditch; intercepting groundwater in a series of dewatering trenches and sumps upstream of construction activities to keep clean water from entering the construction area and the completed channel; pumping turbid water onto the floodplain to allow it to filter through vegetation and infiltrate into the ground; installing nearly 3,000 feet of silt fence along haul roads, the diversion ditch, and other construction areas; and scheduling construction activities so that two or more activities with the potential to produce sediment would not occur simultaneously.

Project: *Conceptual Channel and Floodplain Restoration Plan for German Gulch*
Location: *Silverbow Watershed, Montana*
Confluence was retained by Montana Fish, Wildlife, and Parks and the George Grant Chapter of Trout Unlimited to develop a conceptual plan for restoring habitat critical to the production of Westslope cutthroat trout in German Gulch. German Gulch is a third order tributary that has been heavily impacted by placer mining, grazing and logging activities. These impacts included removal of fines from channel and floodplain substrates (causing increased hydraulic conductivity and consequent reductions in surface water flows); removal of small gravels and elimination of natural bedload sorting processes from the channel (resulting in a reduction in spawning habitat); removal of boulders, large woody debris and other pool forming agents from the channel (causing the elimination of a majority of adult and overwintering habitat); alteration of natural channel planform patterns (resulting in lateral and vertical instability); and elimination of riparian vegetation and soils on the floodplain (preventing the reestablishment of a healthy riparian corridor and promoting the spread of noxious weeds).

The conceptual restoration plan was based on a modified R1/R4 habitat assessment, fisheries data, hydrologic data, historical and anecdotal information, and an assessment of restoration potential. The result of this process was a series of conceptual designs to restore trout habitat and floodplain function, recommendations for research and data gathering, and gross cost estimates for restoration to aid in the procurement of restoration funding.

Project: *Brush Creek Channel Stabilization and Greenway Development*
Location: *Snowmass, Colorado*
To fulfill town master plan goals for an "aesthetic and functional gateway corridor" worthy of a world-class resort, the community of Snowmass Village, Colorado obtained EPA 319 funds to restore several thousand feet of Brush Creek. This stream had become highly incised due to increased flood flows from urbanization (impervious surfaces) and the highly erodible soils found in the drainage. Prior to restoration, the stream flowed

in an unstable gully up to 8 feet deep. Mr. John McCarty developed the conceptual designs and retained the Confluence team to oversee final design, channel reconstruction, landscaping and greenway development phases. To create a channel capable of withstanding mountain floods, the channel was constructed with thousands of large boulders to create a series of step pools. In addition, the channel bed was raised up to six feet in places, evenly distributing grade and hydraulic energy. The riparian area was re-contoured and planted with native vegetation. The project has become a showpiece for the town.

Project: *Coffee Creek Channel and Floodplain Restoration*
Location: *Indiana*
The Confluence team participated in stabilizing over 3,000 feet of eroding stream banks using 5 different bioengineered bank treatments on Coffee Creek. Pools, spawning gravel and woody debris were incorporated into the stream channel to restore habitat for migratory salmon from Lake Michigan. Six floodplain areas totaling over 4 acres were excavated along the stream and will function to remove fine sediments during flood events, leaving clean gravel substrates in the channel. The new floodplains include oxbow wetlands and have been planted with native wet prairie vegetation to increase infiltration and groundwater recharge. The Confluence team provided all stream restoration and bioengineering design services, including all hydraulic modeling and sediment transport analyses. These restoration efforts greatly improved habitat conditions for fish and wildlife at Coffee Creek.

Project: *Chicago Botanic Garden Great Basin Project*
Location: *Chicago, Illinois*
The Confluence team provided consulting and design services to help the Chicago Botanic Garden to meet its goal of creating one of the world's preeminent aquatic gardens. Confluence provided specialty expertise in bioengineered shoreline stabilization and design to a multidisciplinary project team. Key to the success of this project was the creation of stable shorelines and submerged planting beds for collections of water lilies, lotus, and emergent aquatic plants. Through innovative design and unique applications of geotextiles, the team successfully developed designs to help the plant collections flourish while facilitating regular maintenance and controlling the growth of undesirable plant species. The team was able to take the $8 million dollar project from the conceptual design stage to a final bid package in just two months time.

Project: *Geomorphic Investigation of Bank Failure on the Salamonie River*
Location: *Huntington, Indiana*
The Confluence team was retained to investigate bank failure on the Salamonie River in Huntington County, Indiana. The property is located about a mile upstream of the Salamonie Flood Control Reservoir atop a steep bluff, which is approximately 40 feet above the river bed. On August 30, 1998, high flows caused the flood control reservoir to back up and saturate the river banks. As a result of saturation, a large section of the bank next to the property manager's home failed. After inspecting the site, bank failure was determined to be the result of a geotechnical condition called "rapid drawdown" in conjunction with erosion of the toe of the bank by the Salamonie River. Following the site investigation, Confluence submitted a technical report explaining the cause of the failure and assessing the risk of continued slope failures at the site. The report concluded by recommending various stabilization measures and estimating costs to remedy the problem. The report was used by park planning personnel to select appropriate and cost effective measures to address the bank failure.

Project: *Magpie Creek Reclamation Feasibility Assessment*
Location: *Little Missouri Grasslands, Custer National Forest*
Confluence conducted this restoration feasibility study for the Custer National Forest. Magpie Creek, located in the Little Missouri National Grasslands, North Dakota, has undergone a period of significant instability over the past 50 years. This instability has reduced vegetation establishment in the floodplain and threatens roads, pipelines, and crossings that are used by the oil and gas industry, government agencies, and the general public. We conducted a field assessment and preliminary analysis of channel instability and presented conceptual recommendations and gross cost estimates for the reclamation of Magpie Creek. The scope of the investigation included data collection and field reconnaissance to assess site conditions; review of existing designs and documents (including maps, aerial photographs, soils report, geological investigations, climate data, and other relevant information); development of stabilization alternatives and revegetation concepts; a general characterization of soils and stream substrates; an evaluation of hydrologic and hydraulic variables; consideration of sediment supply issues; and development of recommendations with preliminary feasibility and

implementation cost estimates and conceptual sketches.

Watershed Planning and Biological Investigations
Project: Silverbow Creek Watershed Restoration
Location: Montana
The Confluence team is in the process of completing a major watershed restoration plan for the Silverbow Creek Watershed. This watershed has been heavily impacted by mining and other human disturbances. The goal of the plan is to identify restoration opportunities within the watershed and prioritize the expenditure of up to $120 million in restoration funds through a granting process.

The watershed restoration plan involves four primary tasks: 1) determining a baseline condition for the SBC watershed based on existing conditions 2) identifying potential opportunities to restore, rehabilitate, replace, or acquire equivalent natural resources (collectively termed “restoration”) that have been injured by the release of hazardous substances 3) obtaining public feedback and participation in the planning process and 4) prioritizing restoration opportunities based on restoration potential, costs, and input from funding agencies and the public.

Plan development requires the collection, analysis, and interpretation of large volumes of geographic data for the Silver Bow Creek watershed. These data include vegetation cover, riparian condition, fisheries, water quality, wildlife, soils, recreation, and large-scale remediation activities. The final plan will be distributed to the public to provide guidance in preparing grant proposals. The plan will also be used inhouse by the Natural Resources Damage Program as a tool for evaluating these proposals.

Project: Baseline Investigation of the Biological Integrity in the Powder River Basin
Location: Wyoming
Confluence Consulting conducted an in-depth assessment of the biological, chemical, and physical integrity of the Powder River and key tributaries prior to full scale development of coalbed methane. The process involved an intensive assessment of riparian and floodplain conditions, in-stream habitat conditions, substrate composition, macroinvertebrate and periphyton composition, fish populations, and human disturbances. The results of this study will be used to guide sustainable development of coalbed methane so that other uses including fisheries, aquatic life, and agriculture are not harmed.

Project: Biological Assessment of Streams on the Fort Berthold Indian Reservation, North Dakota
Location: Fort Berthold Indian Reservation, North Dakota
The Three Affiliated Tribes contracted with the Confluence team to conduct assessments of biological integrity, riparian condition, and stream morphology on the Fort Berthold Indian Reservation in North Dakota. The Confluence team used environmental monitoring and assessment protocols (EMAP) developed by the Environmental Protection Agency (EPA) to assess 16 prairie streams. We used a three-assemblage approach utilizing assessments of fish, periphyton, and macroinvertebrates. These data were then compared with other EMAP sampling efforts in the Northern Plains ecoregion to provide a rigorous assessment of stream health on the reservation.

Project: Biological, Physical, and Chemical Integrity of Streams in the Mound Valley Watershed
Location: Nevada
Confluence assessed the biological integrity and water chemistry of streams in the Mound Valley to describe existing water quality parameters and to evaluate streamside management practices in the project area. Parameters assessed at four monitoring stations included algal associations, macroinvertebrate community composition, physiochemical water quality parameters, stream habitat conditions, and riparian condition. We also applied a qualitative rapid habitat assessment, measurements of substrate fines, and Rosgen channel type classification. In addition to monitoring stations, we examined conditions throughout the watershed to identify potential sources of impairment and overall watershed health. Using a weight of evidence approach we developed conclusions on the biological, physical, and chemical integrity of the evaluated streams.

4.1.5 Staff Qualifications
This section details the staff qualifications of those individuals who will be involved in projects through the Wetlands Legacy Term Contract. Professional rates are provided in Section 5: Cost Proposal. Qualifications for key personnel comprising the Confluence team are listed in the matrix in Table 2. An organizational chart of

key personnel and their prinicipal responsibilities for the Wetlands Legacy Term Contract is provided on the following page. Resumes which further detail each staff member's expertise, education, special training, and project experience are provided in Appendix A: Project Team Resumes.

Confluence provides engineering intern (EI) staff to complete stream/wetland design drawings and basic engineering services. For projects that require a licensed engineer, Confluence regularly teams with a number of engineering consulting firms including, HKM Engineering, Allied Engineering, and TD&H Engineering. Confluence has an established working relationship with each of these firms and can call upon their expertise for any project through the Wetlands Legacy Term Contract.

Table 2. Qualifications for key personnel on the Wetlands Legacy Term Contract

Key Personnel Qualifications Matrix for Stream Restoration Services																								
Personnel	**Credentials**			**Fields of Competence**									**Relevant Experience**											
	Degree	Years Experience	Professional Registration	Stream Ecology	Fisheries Biology	Fluvial Geomorphology	Surface Water Hydrology	Wetland Ecology	Geology	Information Technology	Soils Science	Reclamation Science	Channel Design	Bioengineering and Bank Stabilization	Fish Habitat Restoration	Rosgen Channel Classification	Watershed Assessment and Planning	Wetland Delineation and Monitoring	Wetland Design and Mitigation	Water Quality Studies/Biomonitoring	Revegetation Design and Planning	Reclamation Planning	GIS Modeling and Mapping	Database Design and Programming
Jim Lovell	M.S.	20		X		X	X						X	X	X	X	X		X					
Carol Endicott	M.S.	14		X	X										X	X	X			X				
Karin Boyd	M.S.	15	P.G.	X		X	X		X		X		X				X							
Ron LeCain	M.S.	7						X			X	X	X					X	X		X	X		
Myla McGowan	M.S.	8						X									X			X				
Michael Sanctuary	M.S.	5		X	X		X						X	X	X	X	X				X			
Matthew Klara	M.S.	3	E.I.				X																	
Katie Alvin	M.S.	10								X	X			X									X	X

APPENDIX A: STANDARD TERMS AND CONDITIONS

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the vendor agrees to acceptance of the following Standard Terms and Conditions and any other provisions that are specific to this solicitation or contract.

ACCEPTANCE/REJECTION OF BIDS, PROPOSALS, OR LIMITED SOLICITATION RESPONSES: The State reserves the right to accept or reject any or all bids, proposals, or limited solicitation responses, wholly or in part, and to make awards in any manner deemed in the best interest of the State. Bids, proposals, and limited solicitation responses will be firm for 30 days, unless stated otherwise in the text of the invitation for bid, request for proposal, or limited solicitation.

ACCESS AND RETENTION OF RECORDS: The contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance (Mont. Code Ann. § 18-1-118). The contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of three years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

ALTERATION OF SOLICITATION DOCUMENT: In the event of inconsistencies or contradictions between language contained in the State's solicitation document and a vendor's response, the language contained in the State's original solicitation document will prevail. Intentional manipulation and/or alteration of solicitation document language will result in the vendor's disqualification and possible debarment.

ASSIGNMENT, TRANSFER AND SUBCONTRACTING: The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Mont. Code Ann. § 18-4-141.)

AUTHORITY: The following bid, request for proposal, limited solicitation, or contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

COMPLIANCE WITH LAWS: The contractor must, in performance of work under the contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by the contractor subjects subcontractors to the same provision. In accordance with section 49-3-207, MCA, the contractor agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract.

CONFORMANCE WITH CONTRACT: No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without prior written consent of the State Procurement Bureau. Supplies delivered which do not conform to the contract terms, conditions, and specifications may be rejected and returned at the contractor's expense.

DEBARMENT: The contractor certifies, by submitting this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by the State.

DISABILITY ACCOMMODATIONS: The State of Montana does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals, who need aids, alternative document formats, or services for effective communications or other disability-related accommodations in the programs and services offered, are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

FACSIMILE RESPONSES: Facsimile responses will be accepted for invitations for bids, small purchases or limited solicitations ONLY if they are completely received by the State Procurement Bureau prior to the time set for receipt. Bids, or portions thereof, received after the due time will not be considered. Facsimile responses to requests for proposals are ONLY accepted on an exception basis with prior approval of the procurement officer.

FAILURE TO HONOR BID/PROPOSAL: If a bidder/offeror to whom a contract is awarded refuses to accept the award (PO/contract) or, fails to deliver in accordance with the contract terms and conditions, the department may, in its discretion, suspend the bidder/offeror for a period of time from entering into any contracts with the State of Montana.

FORCE MAJEURE: Neither party shall be responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the non-performing party, so long as such party is using its best efforts to remedy such failure or delays.

HOLD HARMLESS/INDEMNIFICATION: The contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of the contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of the contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

LATE BIDS AND PROPOSALS: Regardless of cause, late bids and proposals will not be accepted and will automatically be disqualified from further consideration. It shall be solely the vendor's risk to assure delivery at the designated office by the designated time. Late bids and proposals will not be opened and may be returned to the vendor at the expense of the vendor or destroyed if requested.

PAYMENT TERM: All payment terms will be computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the State is allowed 30 days to pay such invoices. All contractors may be required to provide banking information at the time of contract execution in order to facilitate State electronic funds transfer payments.

RECIPROCAL PREFERENCE: The State of Montana applies a reciprocal preference against a vendor submitting a bid from a state or country that grants a residency preference to its resident businesses. A reciprocal preference is only applied to an invitation for bid for supplies or an invitation for bid for nonconstruction services for public works as defined in section 18-2-401(9), MCA, and then only if federal funds are not involved. For a list of states that grant resident preference, see http://www.discoveringmontana.com/doa/gsd/css/Resources/ReciprocalPreference.asp.

REFERENCE TO CONTRACT: The contract or purchase order number MUST appear on all invoices, packing lists, packages and correspondence pertaining to the contract.

REGISTRATION WITH THE SECRETARY OF STATE: Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with sections 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.
If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at http://www.sos.state.mt.us.

SEPARABILITY CLAUSE: A declaration by any court, or any other binding legal source, that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually dependent.

SHIPPING: Supplies shall be shipped prepaid, F.O.B. Destination, unless the contract specifies otherwise.

SOLICITATION DOCUMENT EXAMINATION: Vendors shall promptly notify the State of any ambiguity, inconsistency, or error, which they may discover upon examination of a solicitation document.

TAX EXEMPTION: The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED: Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (Mont. Code Ann. § 18-5-603.) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

TERMINATION OF CONTRACT: Unless otherwise stated, the State may, by written notice to the contractor, terminate the contract in whole or in part at any time the contractor fails to perform the contract.

UNAVAILABILITY OF FUNDING: The contracting agency, at its sole discretion, may terminate or reduce the scope of the contract if available funding is reduced for any reason. (Mont. Code Ann. § 18-4-313 (3).)

U.S. FUNDS: All prices and payments must be in U.S. dollars.

VENUE: This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Mont. Code Ann. § 18-1-401.)

WARRANTIES: The contractor warrants that items offered will conform to the specifications requested, to be fit and sufficient for the purpose manufactured, of good material and workmanship and free from defect. Items offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. They shall be equal in quality and performance to those indicated herein. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance and/or use desired. Exceptions will be rejected.
